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7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,)	No. CR-08-0272 SI
)	
12 Plaintiff,)	DEFENDANT’S MOTION IN LIMINE
)	TO EXCLUDE MEXICAN BIRTH
13 v.)	CERTIFICATE
)	
14 CELSO MARTEARENA-ARRIOLA,)	Pre-Trial Conference: June 24, 2008
)	
15 Defendant.)	
_____)	
16		

17 **I. INTRODUCTION**

18 The government has disclosed its intent to offer into evidence a copy of a document
19 purporting to be Defendant’s Mexican birth certificate and a partial translation of that document.¹
20 Because the purported Mexican birth certificate is not properly authenticated under Federal Rule
21 of Evidence 902(3), Defendant respectfully moves this Court for an order precluding its
22 admission into evidence at trial.

23 **II. DISCUSSION**

24 Under Federal Rule of Evidence 902(3), foreign documents are self-authenticating if
25 _____

26 ¹ A copy of the document at issue bears the Bates numbers CMA0414-416 and is attached hereto as Exhibit A.

1 [1] executed or attested in an official capacity by a person
2 authorized by the laws of a foreign country to make the execution
3 or attestation, *and* [2] *accompanied by a final certification* as to the
4 genuineness of the signature and official position (A) of the
5 executing or attesting person, or (B) of any foreign official whose
6 certificate of genuineness of signature and official position relates
7 to the execution or attestation or is in a chain of certificates of
8 genuineness of signature and official position relating to the
9 execution or attestation.

10 Fed. R. Evid. 902(3) (numbering and emphasis added).

11 The Eleventh Circuit Court of Appeals has recently explained the dual requirements of
12 Rule 902(3):

13 First, there must be some indication that the *document* is what is
14 purports to be. Thus, the proffered document must be executed by
15 a proper official in his official capacity, or the genuineness of the
16 document must be attested to by a proper official in his official
17 capacity. Second, there must be some indication that the *official*
18 vouching for the document is who he purports to be. Accordingly,
19 the rules require that one of a specified group of foreign officials
20 must issue a final certification attesting to the genuineness of
21 signature and title of the person executing or attesting to the
22 document, or of another official who has certified the signature and
23 position of the person executing or attesting to the document.

24 *United States v. Deverso*, 518 F.3d 1250, 1256 (11th Cir. 2008) (internal quotations and citations
25 omitted) (emphasis in original).

26 The purported Mexican birth certificate offered by the government in this case fails to
meet both requirements of Rule 902(3). First, although the document appears to contain an
attestation from a government official and a stamp from the “Registro Civil Actopan, Ver.”, *see*
Ex. A at CMA0416, the government has not produced an English translation of this section of
the document. Accordingly, the government has not demonstrated that the purported birth
certificate satisfies the first prong of Rule 902(3).

Second, even assuming that the purported birth certificate does meet the first requirement
of Rule 902(3), the document nevertheless fails to meet the Rule’s second requirement.
Specifically, the government has not produced a “final certification attesting to the genuineness
of signature and title of the person executing or attesting to” the Mexican birth certificate.

1 *Deverso*, 518 F.3d at 1256; *see also* Fed. R. Evid. 902(3). Because such final certification is
2 absent, the document is inadmissible under Rule 902(3). *See* Fed. R. Evid. 902(3).

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendant respectfully requests that this Court issue an order
5 precluding the admission of the purported Mexican birth certificate at trial.

6
7 Dated: June 17, 2008

8 Respectfully submitted,

9 /s

10 BARRY J. PORTMAN
11 Federal Public Defender
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EXHIBIT A

EXHIBIT A

LEGALIZATION PROJECT
CATHOLIC CHARITIES
1456 Monterey Highway
San Jose, CA. 95110
Q.D.E.I.D. No. 03-058-00

TRANSLATION OF A "BIRTH CERTIFICATE"
(print or type)

1.- NAME: CELSO ----- MARTEARENAS
(first) (middle) (last)

2.- BIRTH: - Place: Congregacion de Santa Rosa, Actopan, Veracruz Mexico
(city or town) (state or province) (country)
- Date: MARCH / 11 / 1959
(month) (day) (year)

3.- FATHER'S NAME: CELSO ----- MARTEARENAS
(first) (middle) (last)

4.- MOTHER'S NAME: HERLINDA ----- ARRIOLA
(first) (middle) (last)

5.- CERTIFICATE ISSUED: - Date: DECEMBER / 15 / 1959
(month) (day) (year)
- Place: ACTOPAN VERACRUZ MEXICO
(city or town) (state or province) (country)
- Magistrate: ARNULFO GRAJALES
(full name)

6.- CERTIFICATE FOUND: Archive or Register: ONE, Page: Not given, No.: 223

7.- NOTATIONS OF IMPORTANCE:

CERTIFICATION OF TRANSLATOR'S COMPETENCE

I, Ana C. Pineda, hereby certify that the above is an accurate translation of the original birth certificate in Spanish, and that I am competent in both English and Spanish to render such translation.

Date: 8 / 30 / 1988

Runday
(signature of translator)

EN NOMBRE DE LA REPUBLICA DE MEXICO,
y como Juez del Estado Civil de este lugar, hago saber a los que la presente
vieren, y certifico ser cierto que en la folia del libro número uno
correspondiente al año 1960, que lleva a la oficina del Registro Civil,
se encuentra un acta del tenor siguiente:



SERIE B N° 68215

EDICION 1960

Al Márgen un sello con el Escudo Nacional que dice.-Registro

Civil.-Actopan, Ver.-Estados Unidos Mexicanos.-Número 223 Doscientos-

DIRECCION GENERAL veintitres.-Reconocimiento de Celso Montearena hijo de Celso Mon-

DE HACIENDATEARENA y de Herlinda Arriola.-Santa Rosa.-Al Centro.-En el pueblo-

de Actopan, Ver, siendo las 10 horas del día 14 de diciembre de 1960-

ante mí Carlos Blanco López Presidente del H. Concejo Municipal y en-

cargado de la oficina del estado civil de este municipio, se recibió-

un acta del tenor siguiente: En la Congregación de Santa Rosa del Mpio

de Actopan, del estado de Veracruz, a las 10 horas del día 15 de di-

ciembre de 1959 ante mí Arnulfo Grajales Agente Municipal y encargado

de la oficina del estado civil de esta Congregación, comparecieron el

señor Celso Montearena y la señora Herlinda Arriola, de este origen -

y vecindad, solteros, agricultores, el primero de 26 años de edad, el

segunda de 24 años de edad, y con habitación en las casa sin número,-

y presentaron un niño vivo a quién pusieron por nombre "CELSO MONTEA-

RENA ARRIOLA" nacido en la casa citada a las 13 horas del día 11 de -

marzo de 1959.-Ambos comparecientes manifiestan que reconocen como hi

jo natural al niño presentado, y piden que en esta acta se hagan cons

tar sus nombres para los efectos de la Ley; así como que la presenta

ción del expresado niño la verifican dentro del término designado por

el artículo 681 del Código Civil.-Fueron testigos de este acto los se

ñores Ladislao Domínguez y Emilio Rojas, de este origen y vecindad, -

solteros, agricultores, el primero de 30 años de edad, el segundo de-

24 años de edad, y con habitación en las casas sin números.-Leída es

ta acta y conformes con ella firman.-El Agente Municipal.-Rúbrica.-

Los Comparecientes.-Rúbricas.-Testigos.-Rúbricas.-Es copia fiel toma

da de su original la cual se archiva en esta oficina y marcada con el

número de esta acta.-Carlos Blanco López.-Rúbrica.- - - - -

ESTA HOJA VALE UN PESO

Expedición inmediata de Copia Certificada, de conformidad con el Decreto de 23 de febrero de 1957, que reformó el artículo 2° del Decreto de 27 de octubre de 1921.

OFICIO

ES COPIA FIEL TOMADA DE SU ORIGINAL, la cual
se expide en el pueblo de Actopan, Veracruz, a los catorce días del
mes de diciembre de mil novecientos sesenta. - - - - -

El Pde. del H. Concejo Municipal.
y Enc. de la Ofna. del Reg. Civil.



Carlos *[Signature]* López.